DD/A Registry
76-1506

OGC 76-1481
22 March 1976

MEMORANDUM FOR: John N. McMahon
Acting Deputy Director for Administration

SUBJECT: Legality of Serving Food and Drinks to Visiting Groups

1. This is in response to your memorandum of 19 March 1976 regarding the above in which you specifically inquire as to "whether there are Federal, State or County statutes which prohibit our serving food and drinks for which the visiting groups reimburse the Agency." At the outset, it should be noted that the Federal Government and the State of Virginia exercise concurrent jurisdiction over the Agency facility. Accordingly, we are governed in this matter both by Federal procedures and guidelines established by the General Services Administration (GSA) as well as by the applicable Virginia law.

STATINTL

2. In a discussion on 22 March the undersigned had with Mr. [redacted]TINTL [redacted] of your staff, it was determined that the existing practice is for the Agency to purchase the food and alcoholic beverages for such affairs in each case from outside business concerns (state-regulated stores in the case of alcohol). It was further understood that each member of the group attending the briefing in question is required to pay a certain amount based on the total Agency expenditure for the food and drink. The refreshments are prepared and served by Agency personnel with absolutely no participation by GSA or GSI employees or facilities.

3. In connection with Virginia requirements, it should be pointed out that VA. CODE ANN. § 4-15 (1973) specifically authorizes state liquor stores to sell alcoholic beverages to Federal instrumentalities. The state has reserved limited jurisdiction over the land upon which the Agency sits to impose license taxes upon any business conducted on the land. However, a state may not impose or collect any tax on or from the United States or any instrumentality thereof. 4 U.S.C. 105. See also McCulloch v. Maryland, 17 U.S. 316. More recently, the Supreme Court has held that Federal instrumentalities are specifically immune from state liquor taxes. United States v. State Tax Commission, 421 U.S. ___, 44 L. Ed. 2d 204, 95 S. Ct. 1872 (1975). Accordingly, since the briefings in question are for official Agency purposes, I have concluded based on the above that the practice of serving food and drink for a price is neither prohibited by state or county law nor subject to any local sales or licensing taxes.

4. With regard to Federal requirements, I contacted Mr. Don Young of the Office of General Counsel, GSA, on 22 March. Mr. Young asked at the outset if the Agency had received the requisite waiver from GSA excepting CIA from the general prohibition against serving alcoholic beverages on Federal property as set forth in GSA regulations (41 C.F.R. 101-20.306). I was able to reply in the affirmative, having received from Mr. [redacted] a STATINTL copy of a 22 February 1971 letter from GSA Administrator Robert L. Kunzig to then CIA Director Helms granting such a waiver. In light of this waiver, Mr. Young advised that the Agency could thus arrange for such affairs to be privately catered and charge each participant an appropriate fee to cover the costs to the Agency of purchasing the food and drink therefor. He emphasized the requirement that there be no GSA connection or participation in such affairs.

5. Accordingly, since the Agency appears to be following the above procedure for the briefings in question, I have concluded that the existing Agency practices in this area are consistent with the appropriate statutory and regulatory authority.

[redacted] STATINTL

Office of General Counsel
Operations & Management Law Division